

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MICHAEL J. SULLIVAN
DIRECTOR

September 20, 1994
AO-94-33

Gary C. Crossen, Esq.
Foley, Hoag & Eliot
One Post Office Square
Boston, MA 02109

Re: Joint expenditures

Dear Mr. Crossen:

This letter is in response to your August 31, 1994 request for an advisory opinion regarding joint expenditures for the purchase of media time by candidates running as a "team."

You have stated that the Weld and Cellucci Committees, which are running as a "team" in the 1994 election, are considering the joint expenditure of campaign funds for the purchase of media time, particularly television advertising. You have asked if the proposed method for calculating each candidate's share of the total expense would be appropriate.

The proposed expense sharing calculation would require each committee to pay a share of the expenditure that is directly related to the amount of air time allocated to either of the candidates. By way of example, you have illustrated the calculation as follows: a 60 second commercial featuring Governor Weld for 40 seconds and Lieutenant Governor Cellucci for 20 seconds would be paid for on a ratio of 40/20 by the respective committees.

You have recognized that some commercials may show one or both of the candidates for only brief periods of time and then close with an endorsement of the Weld/Cellucci team, and that calculation of relative benefit may not always be straight forward. For example, neither candidate may appear in some, or even a substantial portions, of certain commercials. "Under these circumstances, officials of the committees will determine the relative benefit of the commercial to each political committee/candidate and properly document the decision to allow for proper audit of the committees by OCPF."

For the reasons which follow, we believe that the described joint expenditures and expense sharing calculation are consistent with the Massachusetts campaign finance law.¹

The campaign finance law prohibits a political committee organized on behalf of a candidate for constitutional office from making contributions to another committee organized on behalf of another candidate. See M.G.L. c. 55, s. 6. "Contribution" is defined broadly to include a "transfer of money or anything of value between political committees" given for the purpose of influencing the nomination or election of a candidate. See M.G.L. c. 55, s. 1. Prior to 1990, this office advised candidates that joint expenditures involved transfers between political committees that were subject to the prohibition contained in section 6.

In Weld for Governor v. Director of OCPF, 407 Mass. 761 (1990), the Supreme Judicial Court overruled this interpretation and decided that candidates "running as a bona fide 'team'", could make joint expenditures for the purchase of items such as campaign buttons, bumper stickers and signs "bearing both candidates' names." Since the court viewed the prohibition of joint expenditures by candidates running as a team as implicating First Amendment rights of speech and association, the court was especially "reluctant . . . to construct an interpretation of a statute so as to ban activity bespeaking no appearance of corruption." Weld, at 769-770.

The court considered a very limited set of facts, which it noted involved an evenly apportioned sharing of expenses for a limited category of purchases. The court noted that the equal sharing of the bills reflected "the relative benefit reasonably expected to be derived by each candidate." Weld, at 772. Although the court expressly limited its conclusion to the facts involved in that case, and specifically indicated that the holding did not relate to joint expenditures for television

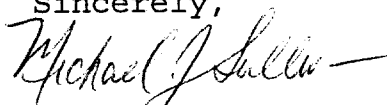
¹ The expense sharing calculation you have described is not necessarily the only permissible way of paying for media coverage which promotes both candidacies. Previously, we informally advised a political committee of a gubernatorial candidate that it could, after the primary, pay the entire amount due for the purchase of media time, even if the candidate's running mate also appears in an advertisement or otherwise benefits from the purchase. Given the unique constitutional status of candidates for governor and lieutenant governor after the primary, payment of the entire amount by the gubernatorial candidate's political committee is appropriate where an advertisement is intended primarily to further the campaign of the gubernatorial candidate.

advertising, we believe that the court's analysis requires the conclusion that the joint expenditures described in your letter would likewise not violate the campaign finance law.²

In conclusion, the making of joint expenditures as described in your letter does not violate the campaign finance law. There is no suggestion under these facts that the expenditures would be used to avoid the prohibition, contained in section 6 of chapter 55, on contributions by political committees organized on behalf of constitutional candidates to other candidate committees.

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55. Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,



Michael J. Sullivan
Director

MJS/cp

² In addition, recently enacted legislation suggests that section 6 should not be read as prohibiting joint campaign expenditures. The legislation, which generally addresses attribution of contributions made through an intermediary, states that section 6 does not prohibit "a bona fide joint fund-raising effort" by certain political committees and candidates. The absence of a reference to bona fide joint expenditure by two candidate committees cannot reasonably be read as a prohibition of such expenditures, if the expenditure is consistent with the campaign finance law. See Section 29 of Chapter 43 of the Acts of 1994.